

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13392  
Docket No. 13312  
99-2-97-2-84**

**The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.**

**(Brotherhood Railway Carmen, Division of  
( Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(CSX Transportation, Inc. (former Baltimore &  
( Ohio Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the Committee of the Union that:**

- 1. The Carrier violated Rule 4 and Rule 8, of the controlling Agreement as amended, on August 16, 1996 by not allowing Carman M.S. Rice an overtime call on the 7:00 a.m. < > 3:00 p.m. shift for which he was qualified.**
- 2. That the Carrier be ordered to pay Carman M.S. Rice eight (8) hours pay at the Carman's time and one-half rate of pay account violation of Rule 4 and Rule 8.”**

**FINDINGS:**

**The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.**

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

Parties to said dispute were given due notice of hearing thereon.

On August 16, 1996, the Claimant was first out on the Overtime Board and was called to input car repair billing on the CRT. When the Foreman discovered that the Claimant had been called for this position, he instructed the Carman who called the Claimant to call him back and advise him that the call was canceled.

Another Carman was called off the overtime list to fill the vacancy.

The instant claim was filed seeking reimbursement citing Rules 4 and 8 of the Agreement. Rule 4 specifies how overtime is to be paid. Rule 8 concerns the distribution of overtime.

The Carrier contends that the Claimant had trained on this position, but gave it up after approximately three weeks because he was unable to perform the duties required of the position.

The Organization then had to counter the Carrier's arguments with evidence that the Carrier was in error. This it failed to do. Instead, it challenged the Carrier to "concretely demonstrate through documentation that Carman M.S. Rice disqualified himself from the position of CRT billing input. . . ."

This issue could have been resolved by providing a statement from the Claimant as to whether he did or did not disqualify himself, but this did not happen.

Without such evidence, the Board, in reviewing only that evidence which had been exchanged on the property, has no choice other than to deny the Organization's claim because of its failure to produce the evidence necessary to sustain its position.

### **AWARD**

**Claim denied.**

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

**Dated at Chicago, Illinois, this 12th day of April 1999.**